

Ex Parte

CC Docket 94-129



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September 27, 1996

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Federal Communications Commission
Office of Secretary

Mr. John Muleta
Chief - Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N. W.
Washington, D. C. 20554

Dear Mr. Muleta,

The newly-enacted Section 258(a) of the Communications Act contemplates that the Commission will promulgate regulations governing the selection process for intraLATA and local carriers, as it has already done with regard to customers' selection of a primary interexchange carrier ("PIC"). The following analysis outlines AT&T's concerns over the role the local exchange carrier ("LEC") will play in processing a customer's selections of a primary interexchange, intraLATA, or local carrier ("PLOC"). AT&T also explains the concerns that regulatory and marketplace developments have created regarding the LECs' role in resolving disputes over carrier selections, and in "freezing" customers' carrier designations.

The Commission's current PIC selection procedures contemplate that where a customer or the displaced interexchange carrier challenges a PIC change, the LEC will act to resolve the dispute. Assigning this role to the LEC initially appeared to be appropriate, because under the Commission's presubscription decisions those carriers have a duty of nondiscrimination and neutrality as between competing interexchange carriers. Moreover, the Bell Operating Companies ("BOCs") and GTE Telephone Operating Companies ("GTOCs"), who serve the vast majority of all customers, were themselves precluded from providing interexchange service under their respective antitrust decrees.

In practice, permitting the LECs to act as the arbiter in PIC disputes was not always satisfactory even prior to enactment of the Telecommunication Act, because some LECs that were not bound by the MFJ or GTE Decree formed interexchange affiliates devoted primarily (if not, exclusively) to serving customers in their own local exchange service areas. This has resulted in apparent conflicts of interest between the carrier in its role as the LEC and in its role as affiliate of an interexchange competitor. These apparent conflicts would unquestionably be greatly exacerbated once the Bell Operating Companies are granted in-region interexchange relief.

It is apparent that LECs would face a direct conflict of interest in attempting to decide intraLATA and/or local carrier selection disputes with their own competitors. Obviously, it would create an unacceptable risk of anticompetitive conduct to allow

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incumbent LECs ("ILECs") to decide whether to release a customer to an alternative LEC ("ALEC"), or to decide a challenge to the designation of the ALEC as the customer's preferred local carrier.

While the Commission theoretically could itself attempt to resolve these disputes, the sheer volume of PIC challenges as a practical matter precludes that approach. One solution to this quandary could be for the parties to mutually agree upon a designated third party or entity to make binding determinations in such disputes, applying guidelines and principles established by the Commission. Other procedures, such as Commission designation of an industry body to review and determine such disputes, may also be possible. In all events, it is clear that the conflict resolution mechanism in use with PIC disputes is not suited to adoption in the intraLATA/local context, and in the longer term is not even a viable basis for resolving PIC disputes where the LEC or its affiliate also provides interexchange service. As the Commission contemplates the steps necessary to promulgate regulations governing the selection process for intraLATA and local carriers, AT&T urges your consideration of the marketplace realities outlined above when establishing roles for industry participants in any carrier selection dispute process.

The changes in the competitive marketplace described above also underscore the importance of Commission action to reemphasize and delineate the LECs' legal obligation to behave in a neutral and nondiscriminatory manner when processing PIC choices by customers who establish new service, or add lines to existing service, in those carriers' service areas. AT&T's experience indicates that in many instances customers who contact the LECs for these services are actively solicited to designate those carriers' long distance affiliates as their PIC choice, even after the customers have already selected AT&T as their PIC. Similar conduct by LECs has been encountered where intraLATA competition on a presubscribed basis has been authorized.

To preclude LECs from using the customers' need for these service arrangements as a pretext to market their long distance affiliates' services, the Commission should prescribe market rules that specify the limitations on LEC business and commercial office personnel in handling interLATA and intraLATA carrier selection when processing customer orders for local service or service upgrades. This action will help to assure that LECs do not unlawfully discriminate against competing IXC's in the PIC selection process, and assure that consumers are not improperly pressured by those carriers when selecting a presubscribed local toll or long distance provider.

Finally, the growing popularity of ILEC solicitations offering to protect the customer's selection of a primary interexchange carrier (e.g., PIC freeze and PIC protection services) has begun to show signs of abuse as the opening of the local marketplace to competitive providers moves closer. While AT&T believes that the concept of PIC protection is a reasonable consumer service, its use as a mechanism to "lock-in" the incumbent LEC as the customers local service provider on the eve of opening the local marketplace to competition must be discouraged. In certain areas where the ILEC has already entered the interexchange market (e.g., Connecticut) there are already strong indications that PIC freeze/protect measures are being used in just such a discriminatory manner.

LECs should offer customers the right to "PIC protect" their accounts subject to FCC regulations that should be enacted expeditiously, which clearly define the terms under which customers can implement (and override) the protections, and which insure that the PIC Protect program is administered in a nondiscriminatory manner that does not favor the LEC's affiliated long distance, intraLATA toll, and local services operations over competing providers of those services.

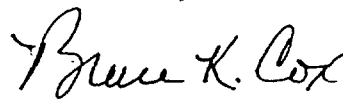
The regulations should be uniformly applied throughout the U.S. to insure consistency and fairness, and should establish simple procedures for customers to implement and override protections either by written request or telephone contact. Responsive, inbound telemarketing capabilities to handle these requests should be available at all hours of every day, in-language and, where applicable, in a mechanized format, similar to the support provided for other important customer service requests.

The procedures should permit customers to freeze long distance, intraLATA toll, or local carrier designations independent of each other; LEC requirements that all customer accounts must be frozen collectively should not be permitted. In addition, specified service quality thresholds for items such as call handling and processing time frames should be required.

The rules should preclude an ILEC from using the PIC protection process to favor its own (or its affiliate's) service offerings over those of competitors. For example, ILECs must process requests from customers who seek to "freeze" their PIC relationship (or override PIC Protection status) with other carriers in exactly the same manner as they process requests from customers of their own services; ILECs should not be able to freeze accounts for intraLATA toll services until 6 months after the ILEC fully implements intraLATA toll dialing parity (for local services 6 months after they have fully implemented the competitive checklist requirements of Sec. 251); ILECs must treat customer contacts regarding PIC freeze as administrative only, and not use them to engage in any cross selling or other marketing activities; ILECs must provide all carriers equal and timely access to the same data regarding PIC freeze status as it provides to its own or affiliated service providers (in any event certain minimum categories of information should be provided). Lastly, significant financial penalties should apply for failure to follow applicable procedures.

To avoid the inherent conflict of interest between competing carriers, serious consideration should be given to establishing procedures under which neutral third parties administer PIC protection. Alternatively, the Commission could consider implementing rules that permit the "freezing" or "un-freezing" and changing of the customer's selection of a local or interexchange carrier to be verified by a third party. In all events, AT&T urges the Commission to act promptly to address the serious problems described above, which threaten the successful implementation of its pro-competitive regulatory policies.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce K. Cox". The signature is fluid and cursive, with the first name "Bruce" being more prominent than the last name "Cox".